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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-959

IOWA ELECTRIC LIGHT AND POWER COMPANY,

Petitioner,

v.

ATLAS CORPORATION,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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Preliminary Statement

Petitioner seeks a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review an order of that court unanimously directing that this diversity action be dismissed for lack of personal jurisdiction over the defendant, Atlas Corporation.

Petitioner contends that the decision below erroneously applies the decisions of this Court which interpret the due process clause of the fourteenth amendment as it limits a state's assertion of personal jurisdiction over a nonresident, and is also in conflict with recent decisions in two other circuits.

Question Presented

Whether the court below correctly held that the assertion of personal jurisdiction by a federal district court in Iowa over a foreign corporation, whose only contact with Iowa was the execution of a contract with an Iowa corporation and a single visit to Iowa of less than 24 hours by a representative of the foreign corporation, and which corporation solicited no business in Iowa, employed no agent or employees in Iowa and shipped no goods directly or indirectly into Iowa, was violative of the due process clause of the fourteenth amendment.

Statement of the Case

A. The Parties and the Contract

Petitioner Iowa Electric Light and Power Company ("Iowa Electric") is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. Respondent Atlas Corporation ("Atlas") is a Delaware corporation which had its principal place of business in New York prior to the filing of the complaint.* Atlas is not qualified to do business in Iowa; it solicits no business in Iowa; it employs no agents or employees in Iowa. Furthermore, Atlas ships no goods into Iowa and owns no property, real or personal in Iowa.

On October 15, 1973, the parties entered into a contract whereby Atlas was to supply approximately 600,000 pounds of uranium concentrates ("yellowcake") to Iowa Electric

* Atlas' principal place of business since late 1977 has been Princeton, New Jersey.

during the period 1975-1978. Bids for the contract were solicited by Iowa Electric through the Washington, D. C. offices of its nuclear fuel consultants, Pickard, Lowe and Garrick. The contract was negotiated in Washington, D. C. and executed by Atlas in New York. The only time an Atlas representative was physically present in Iowa prior to this action was during a one-day trip by the President of Atlas, two years after the contract had been executed, in connection with the negotiation of a 1976 option purchase agreement which amended the contract.

In performing its obligations under the contract, Atlas extracted uranium ore from its mines in Utah and Colorado and transferred the ore to its mill in Moab, Utah for milling into uranium concentrates known as "yellowcake". Pursuant to the contract, the yellowcake was shipped in steel drums to an Allied Chemical plant in Metropolis, Illinois and at no time passed through Iowa. At the Allied plant, title to the yellowcake passed to Iowa Electric in accordance with the terms of the contract and all of Atlas' obligations under the contract with respect to that shipment of yellowcake terminated.

The yellowcake from Atlas was then commingled with all other yellowcake shipped to Allied by other uranium producers and converted into a different chemical substance known as uranium hexafluoride (UF_6), a gas. Iowa Electric's rights in UF_6 produced by Allied were governed solely by an agreement between those two entities. The UF_6 was placed in steel cylinders and shipped by Allied to a gaseous diffusion enrichment plant in Oak Ridge, Tennessee operated by the United States Department of Energy. At Oak Ridge the unenriched UF_6 gas was com-

mingled with unenriched UF_6 from other sources before enrichment. The enriched UF_6 gas was then shipped to the General Electric fuel fabrication plant in Wilmington, North Carolina, where it was chemically converted into UO_2, a brownish powder, and compressed into ½-inch cylindrical pellets, which were sealed inside metal rods grouped into bundles. The UO_2 then "owned" by Iowa Electric again bore no relation to the commingled UF_6 "owned" by Iowa Electric at the previous stage of the cycle. These fuel bundles were finally shipped from General Electric to the Duane Arnold Energy Center in Iowa some 12 months after a quantity of yellowcake was shipped by Atlas to Illinois.*

Thus, not only were there at least three additional entities in possession of the uranium owned by Iowa Electric after Atlas parted with title, but at almost every step of the way, the uranium actually "owned" by Iowa Electric was physically distinct from the uranium "owned" at the prior step. What entered Iowa, owned by the New York-based Arnold Fuels, bore no relation to the yellowcake shipped by Atlas to Illinois.

B. The Dispute

Between late 1972, when the price clause of the contract was agreed upon, and 1976, Atlas' cost of production of yellowcake rose 150%, an increase found by the district court to have been largely unforeseeable and uncontrollable.

* During this process, moreover, title to the fuel bundles passed to Arnold Fuels, Inc., a Delaware corporation with a principal place of business in New York. Some 70% of the payments received by Atlas under the contract were received from Arnold Fuels and not from Iowa Electric.

By 1975, aware of its rapidly escalating costs, Atlas sought to renegotiate the contract to provide for a price more in keeping with Atlas' actual costs of production. Iowa Electric refused to consider any price relief on the contract, although it secured from Atlas an option to purchase 250,000 additional pounds of yellowcake at the market price, in return for which Iowa Electric agreed to pay Atlas $1.25 per pound on pre-option deliveries. Atlas continued to press its claims for price relief during 1976, to no avail, and in early 1977 Iowa Electric seized upon a brief and unavoidable delay in Atlas' deliveries under the contract to commence this litigation seeking to compel Atlas to deliver the yellowcake called for under the contract.

C. The Decisions Below

On March 22, 1977, during the course of discussing contract modifications with Atlas, Iowa Electric commenced this action seeking preliminary and permanent orders directing specific performance of the contract. Since Atlas did no business in Iowa and since the contract was negotiated and fully performed outside of Iowa, Atlas, on March 31, 1977, moved to dismiss the complaint on the ground that the district court lacked *in personam* jurisdiction. On April 7, 1977, the district court denied Atlas' motion (Pet. App. C), holding, erroneously, as the court of appeals later determined, that "it would not offend traditional notions of fair play and substantial justice to subject defendant to this court's personal jurisdiction". The district court held that Atlas' "products here in dispute physically enter Iowa as per the contract" and that among Atlas' contacts with Iowa were "numerous shipments of nuclear fuel components."

The trial court then directed the parties to litigate the issues raised in Iowa Electric's complaint, and a hearing was held on Iowa Electric's motion for preliminary relief. Shortly thereafter, Atlas filed a compulsory counterclaim seeking an equitable adjustment of the contract price pursuant to the Uniform Commercial Code due to its unforeseen cost increases. Following the trial judge's indication that he would deny Iowa Electric's motion, the parties consented to an order whereby Atlas would continue to make deliveries to Iowa Electric under the contract, reserving for trial the question of price relief raised by its counterclaim. Those issues were tried by the district court in January 1978 and decided adversely to Atlas in two decisions, the first in May 1978 (Pet. App. 1b-16b) and the second, relying on a different rationale from the first, in September 1978 (Pet. App. 16b-23b).

Atlas appealed to the Court of Appeals for the Eighth Circuit from the district court's decision on the merits as well as its denial of Atlas' motion to dismiss. In its decision (Pet. App. A), the court of appeals found it unnecessary to reach the merits of the case, holding that the district court had erred in determining that it had personal jurisdiction over Atlas. As Atlas had not, in fact, shipped its product into Iowa, the Eighth Circuit held that "[m]erely entering into a contract with a forum resident does not provide the requisite contacts between a defendant and a forum state" (Pet. App. 4a) to justify the exercise of personal jurisdiction consistent with the due process clause. The court of appeals also did not find it necessary to pass on the question of the territorial limits of effective service under Iowa law.

Reasons for Denying the Writ

Contrary to the broad assertions made in petitioner's brief to the effect that the decision below would have "substantial consequences for large numbers of commercial transactions" (Pet. at 8) and "could significantly limit the ability of the parties to such transactions to enforce their rights" (Pet. at 20), respondent Atlas Corporation submits that the Eighth Circuit correctly applied the fundamental principles of personal jurisdiction as elucidated by this Court to the peculiar facts of this case. Specifically, as the court below recognized, the nature of the contract at issue here was such that no goods were shipped by Atlas, directly or indirectly, into the State of Iowa. Moreover, as the Eighth Circuit also held, there were no significant contacts of any kind between Atlas and the State of Iowa during the negotiation or administration of the contract.

Given the peculiar nature of uranium concentrate sales contracts in general and the contract at issue in particular, the decision of the Eighth Circuit can easily be shown to be fully consistent with both Supreme Court precedent and the court of appeals decisions cited by petitioner as allegedly "conflicting" with that decision. It is therefore respectfully submitted that no reason exists for this Court to review the decision below, and that, accordingly, the Petition for a Writ of Certiorari should be denied.

I

The Decision Below Correctly Applied the Controlling Standards Set by This Court.

As the Eighth Circuit recognized, this Court's decisions in *Hanson* v. *Denckla,* 357 U.S. 235 (1958), *Shaffer* v. *Heitner,* 433 U.S. 186 (1977) and *Kulko* v. *Superior Court of California,* 436 U.S. 84 (1978) set forth the controlling principles for determining whether Atlas had sufficient contact with the State of Iowa to permit the district court constitutionally to exercise *in personam* jurisdiction over Atlas.

Specifically, as the court of appeals held, since Atlas shipped none of the yellowcake covered by the contract into Iowa, the only contacts with Iowa were those of the plaintiff and the only effects in Iowa were those attributable to the plaintiff's unilateral activity.*

Moreover, unlike *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 (1957), the contract here was not solicited, negotiated or executed in Iowa, nor was it performed in Iowa, "except for certain ministerial acts by Iowa Electric involving notice, ordering and record-keeping" (Pet. App. 7a). The fact, emphasized by petitioners (Pet. at 4), that the parties chose Iowa law to govern the contract has,

* As to the supposed dire "effects" on Iowa the petitioner claims any breach of the contract would have (Pet. at 5, 10), it suffices to note that nowhere in the proceedings below did petitioner present any evidence that a failure by Atlas to deliver uranium concentrates to Allied Chemical in Illinois would result in "serious impact" on the "economy of Iowa". Indeed, as petitioner well knows, its nuclear generating facility was inoperative for a lengthy period during this litigation without apparent ill effect on the citizens of Iowa.

as the court of appeals ruled (Pet. App. 5a-6a), no relevance to the question of whether personal jurisdiction over Atlas could validly obtain in Iowa. *See also Hanson* v. *Denckla, supra,* 357 U.S. at 254; *Shaffer* v. *Heitner, supra,* 433 U.S. at 215; *Kulko* v. *Superior Court of California, supra,* 436 U.S. at 98.

In this case, as in the *Hanson, Shaffer* and *Kulko* cases, there was simply no evidence that Atlas "purposefully avail[ed] itself of the privilege of conducting activities within the forum state," *Hanson* v. *Denckla, supra,* 357 U.S. at 253.

II

The Decision Below Does Not Conflict with Decisions in Other Circuits.

In its facile attempt to manufacture a conflict among the circuits such as to induce this Court to grant certiorari here, petitioner relies on two decisions readily distinguishable on their facts from the instant case.

For example, in *Product Promotions, Inc.* v. *Cousteau,* 495 F.2d 483 (5th Cir. 1974), the defendant mailed into the forum state the very items it had contracted to supply, whereas here, as the Eighth Circuit held, Atlas *shipped nothing* into Iowa.

In *Pedi Bares, Inc.* v. *P&C Food Markets, Inc.,* 567 F.2d 933 (10th Cir. 1977), an out-of-state wholesaler defendant provided a Kansas manufacturing plaintiff's representative with a letter of introduction to retail stores defendant serviced to facilitate the solicitation of orders for goods.

Defendant's letter indicated that the goods ordered from plaintiff would be shipped directly to the stores but billed through defendant. Thus, the defendant effectively used the Kansas plaintiff as its agent in soliciting business from and distributing goods to retail stores it serviced. Based on these activities, the court found that the defendant had "purposely availed itself" of the privilege of acting within the forum state and invoking its laws. 567 F.2d at 937. No similar business relationship can be found here between Atlas and Iowa Electric.

In addition, the court in *Pedi Bares* relied on the nature of the activities which plaintiff conducted in the forum state, the actual manufacture of the goods shipped to the retail stores served by defendant. In fact, the court found it necessary to distinguish another Kansas case denying jurisdiction on the ground that contractual performance within the state by plaintiff Kansas corporation in that case had consisted merely of acting as a "clearing house" operation for an out-of-state transaction. *Misco-United Supply, Inc.* v. *Richards of Rockford, Inc.*, 215 Kan. 849, 528 P.2d 1248 (1974). The same rationale distinguishes *Pedi Bares* from this case, since, as the Eighth Circuit found, the sole performance in Iowa consisted of "certain ministerial acts by Iowa Electric involving notice, ordering and record-keeping" (Pet. App. 7a).

The only real connection between Atlas and the State of Iowa to which petitioner can point is that Atlas' deliveries of yellowcake to Illinois eventually resulted in Iowa Electric's receiving processed fuel rods from its supplier in North Carolina. As a number of circuits have held, the

mere fact that a seller knows or has reason to assume that his product is destined, in some form, for the forum state, cannot, without more, sustain personal jurisdiction over him. *See Hutson* v. *Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir.) (*en banc*), *cert. denied*, 439 U.S. 983 (1978); *Charia* v. *Cigarette Racing Team, Inc.*, 583 F.2d 184 (5th Cir. 1978); *Golden Belt Manufacturing Co.* v. *Janler Plastic Mold Corp.*, 281 F. Supp. 368 (M.D.N.C. 1967), *aff'd*, 391 F.2d 266 (4th Cir. 1968).

III

There Are No Compelling Reasons for This Court to Grant Certiorari.

As the foregoing discussion indicates, the result reached below turned largely on the unique characteristics of the nuclear fuel cycle and the particular circumstances surrounding the solicitation, execution and performance of this contract. The fact that the yellowcake shipped by Atlas is not merely chemically altered but commingled at every step of the processing cycle with uranium from dozens of other suppliers makes this case fundamentally different from one where a raw product is shipped by a defendant into one state to be transformed into a finished product and delivered to a plaintiff in the forum state. To claim, as petitioners do, that allowing the decision of the court of appeals to stand would limit the ability of "[t]housands of suppliers and manufacturers . . . to enforce their rights under agreements with foreign suppliers or buyers" (Pet. at 19-20), in light of the facts set forth above, is patently a gross overstatement.

Petitioner also overstates the significance of a decision by this Court in *World-Wide Volkswagen Corp.* v. *Woodson,* 585 P.2d 351 (Okla. 1978), *cert. granted,* 440 U.S. 907 (1979), on the outcome of the instant petition. *World-Wide Volkswagen* involves the common situation of tort claims against foreign manufacturers or suppliers for an injury occurring in the forum state, and raises important questions of whether the mere fact that use of the manufacturer's product in the forum state is foreseeable provides enough of a constitutional nexus with that state for the exercise of *in personam* jurisdiction. By contrast, in this commercial case, based on breach of contract, no product of Atlas' entered Iowa and no tortious injury is alleged. Many state "long-arm" statutes have been drafted which purport to confer personal jurisdiction in precisely the circumstances present in *World-Wide Volkswagen* and which would be immediately affected by a decision in that case. The same can hardly be said to be the case here, where the court of appeals had considerable difficulty in determining whether the Iowa long-arm statute even extended to the facts of this case (Pet. App. 3a-4a).

In short, this case is inappropriate for review by this Court because of the correctness of the decision below and the largley *sui generis* nature of the facts of the case.

Conclusion

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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